

ATTACHMENT TO MOTION TO INTERVENE

Case No. 2:20-cv-3657

**Proposed Motion to Dismiss of the State ex rel Wilson and the Department of
Administration**

DEFENDERS OF WILDLIFE,)	No.: 2:20-cv-3657-BHH
Plaintiff,)	
v.)	
U.S. FISH AND WILDLIFE SERVICE,)	MOTION TO DISMISS
Defendant.)	OF
And)	STATE OF SOUTH CAROLINA, EX
CHARLES RIVER LABORATORIES)	REL ALAN WILSON,
INTERNATIONAL, INC., STATE OF)	ATTORNEY GENERAL
SOUTH CAROLINA, EX REL ALAN)	AND SOUTH CAROLINA
WILSON, ATTORNEY GENERAL, AND)	DEPARTMENT OF
SOUTH CAROLINA DEPARTMENT OF)	ADMINISTRATION
ADMINISTRATION,)	
Intervenors-Defendants,)	

The Intervenors-Defendants State of South Carolina ex rel Alan Wilson, Attorney General, and the South Carolina Department of Administration, as named herein, hereby move for dismissal of the Complaint in this case pursuant to Rules 12(b)(1) and (6), FRCP, in that, for the reasons set forth below, this Court lacks subject matter jurisdiction of this case, and Plaintiff has failed to state a claim upon which relief can be granted:

1. This matter is controlled by the lease attached to the Complaint between the State and the Defendant United States Fish and Wildlife Service , and Plaintiff has no standing to challenge it. ECF 1-1. The lease states in part that it is “[s]ubject to . . . the right of the State of South Carolina to authorize the taking of shellfish, finfish and other salt water species within the refuge boundary.”

Under the lease, the State of South Carolina controls harvesting of horseshoe crabs within the Refuge covered by the lease.

2. This case presents no case or controversy or justiciable controversy given that this matter is controlled by the lease. The control of this matter by the lease and the interests of the State in point 3, *infra*, make this case a matter of State sovereignty which is beyond the jurisdiction of the Federal Courts.
3. The State's sovereign interests include its title to lands lying between the mean high water mark and mean low water mark which is held by the State in trust for public purposes absent a grant from the State or the King of England. *See Hobonny Club v. McEachern*, 272 S.C. 392, 252 S.E. 2d 133 (1979). Also, under S.C. Const. art. XIV, § 4, the State's waterways are public highways.
4. These intervenors reserve the right to assert other provisions of State and Federal law in support of dismissal.

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